

**SOAH DOCKET NO. 582-22-0259 – LEAD DOCKET**  
**SOAH DOCKET NO. 582-22-0260**  
**SOAH DOCKET NO. 582-22-0261**  
**TCEQ DOCKET NOS. 2021-0571-DIS, 2021-0572-DIS, AND 2021-0573-DIS**

<b>FOR THE CREATION OF</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>LAKEVIEW MUNICIPAL</b>	§	
<b>UTILITY DISTRICT NOS. 2, 1,</b>	§	<b>OF</b>
<b>AND 3 OF ELLIS COUNTY</b>	§	<b>ADMINISTRATIVE HEARINGS</b>
	§	

**INDIVIDUAL PROTESTANTS’ EXCEPTIONS TO THE PROPOSAL FOR DECISION**

**I. Introduction**

Individual Protestants concur with the Exceptions filed by the City of Waxahachie, Texas (City) and Ellis County, Texas (County). Individual Protestants adopt those Exceptions. For the sake of judicial efficiency, Individual Protestants will not repeat those arguments.

Individual Protestants would like to make particular points with regard to the burden of proof and the feasibility of the proposed project. With regard to the demonstration that creation of the MUDs will not adversely impact groundwater, and with regard to the information required to justify the granting of road powers, the ALJs have improperly excused the Applicant from its burden of proof.

Furthermore, the proposed project is not feasible in light of surrounding roadways.

For these reasons, the Petitions should be denied.

**II. Applicant should bear the burden of proof on all issues.**

**A. The ALJs misplaced the burden of proof with regard to groundwater impacts.**

The evidence is undisputed that the proposed project will obtain water from Sardis-Lone Elm Water Supply Corporation (Sardis). It is further undisputed that Applicant’s evaluation of groundwater impacts was based on the false assumption that all water would come from surface water sources. Applicant did not assume that groundwater would be the “primary” source of water

for the development -- Applicant's technical experts assumed that groundwater would *not* be used by the development.<sup>1</sup> During the hearing on the merits, Applicant's expert recanted this expectation, and *specifically* admitted that it is not correct to say that the MUDs would solely use surface water.<sup>2</sup> This issue did not turn on general allegations.

Yet, the ALJs assume that surface water will be the sole water used by the MUDs, and the ALJs place the burden of proof on the protestants, requiring that the protestants demonstrate the particular amount of water that would be used by development in the Districts – something which the Applicant was in the best position to determine, and had the responsibility to determine. This misallocation of the burden of proof is legal error.

B. The ALJs misplaced the burden of proof with regard to road powers demonstrations.

The TCEQ rules for a district creation petition seeking road powers explicitly require that an applicant provide “a preliminary layout showing the proposed location for *all* road facilities to be constructed, acquired, or improved by the district.”<sup>3</sup> Applicant only claimed that the preliminary layout showed the major thoroughfares, without any claim that the preliminary layout showed the location of all road facilities to be constructed, acquired or improved by the Districts.<sup>4</sup> Applicant never represented that the preliminary layout showed all road facilities to be constructed, acquired, or improved by the Districts.

The ALJs fail to recognize that, even interpreted in a manner most favorable to the Applicant, the Applicant's representations did not demonstrate compliance with the applicable rules. No refutation of Applicant's representations was needed to demonstrate that Applicant had

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<sup>1</sup> Exh. App-17, p. 99 (MUD No. 2), Exh. App-36, p. 95 (MUD No. 1), Exh. App-52, p. 112 (MUD No. 3).

<sup>2</sup> Tr. Vol. 2, p. 150.

<sup>3</sup> 30 Tex. Admin. Code § 293.202(b), referencing 30 Tex. Admin. Code § 293.202(a)(7) (emphasis added).

<sup>4</sup> Applicant's Closing Brief, at p. 19.

not met its burden of proof. The ALJs demand the impossible, by requiring that the protestants present evidence refuting claims *that Applicant never made*. This misplaces the burden of proof.

C. The Proposed MUDs are not feasible in light of the limitations of area roadways.

The applicable statutes require that a MUD be demonstrated to be “feasible.”<sup>5</sup> This would include feasible roadway access for the traffic created by the proposed project.

In this case, Applicant failed to demonstrate that the MUDs, and the project they would serve, are feasible in light of the nature of the surrounding roadways. Instead, Applicant’s assumption of sufficient roadway access is speculative.

Access to MUD No. 2 is by FM 664 North from Waxahachie, and the District is approximately 2 miles North of U.S. 287 and approximately 0.9 miles South of FM 1387.<sup>6</sup> The project depends upon a re-sized FM 664 that does not exist, with no evidence that it will reliably come to exist, and access via Bob White Road and Little Branch Road. No traffic analysis has been presented to demonstrate that these roads have the capacity to handle the traffic created by the District, nor to demonstrate that the necessary improvements outside the District boundary will be made that would be necessary for these roads to handle the increased traffic as a result of the development within MUD No. 2.

The story is similar for MUD No. 1. MUD No. 1 is bound by Black Champ Road to the West and is approximately 400 feet to the West of FM 664.<sup>7</sup> Access to MUD No. 1 depends on an expanded FM 664 and an expanded Black Champ Road.<sup>8</sup> Black Champ Road, in its current state, is only 18 feet wide, with barely enough room for two cars to pass each other,<sup>9</sup> and after

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<sup>5</sup> 30 Tex. Admin. Code § 293.11(d)(5)(J).

<sup>6</sup> Exh. App-17, p. 86.

<sup>7</sup> Exh. App-36, p. 82.

<sup>8</sup> Exh. App-36, p. 113.

<sup>9</sup> Exh. IP-100, p. 3.

floods it takes several weeks for Black Champ Road to clear of water.<sup>10</sup> Yet, no evidence has been presented to demonstrate that the anticipated expansions and improvements will occur, nor has any traffic analysis been presented to show that the roadways can handle the traffic that will be created by the proposed project within MUD No. 1.

The information supplied with regard to MUD No. 3 also fails to demonstrate that sufficient roadway access is available for subsequent development in MUD No. 3 to render it feasible. MUD No. 3 is bound by Long Branch Creek to the East and is approximately 700 feet to the East of a North to South stretch of Long Branch Road.<sup>11</sup>

The roads in their current state are woefully inadequate to handle additional traffic. Applicant has presented no traffic expert, and no traffic analysis indicating that the roadways necessary to access the proposed MUDs are sufficient for that purpose. For these reasons, Applicant has not demonstrated that traffic access is sufficient for the proposed project to be feasible.

### **III. Conclusion**

Protestants adopt the Exceptions submitted by the City and County, and ask that the Petitions be denied due to Applicant's failure to meet its burden of proof on multiple issues.

Respectfully submitted,

/s/ Eric Allmon

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<sup>10</sup> Exh. IP-300, p. 8.

<sup>11</sup> Exh. App-52, p. 99.

## **CERTIFICATE OF SERVICE**

I certify that on May 24, 2023, a true and correct copy of the foregoing document was filed with SOAH and the Chief Clerk of the TCEQ, and a copy was served to all persons listed below.

/s/ Eric Allmon  
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